United States Supreme Court.

A. V. BLANCHARD & CO.

vs.

ANTOINE PUTTMAN, *et al.*

ERROR
No. 361.

Caleb Clark, Printer, S. W. Cor. Third and Walnut Sts., Cin.

United States Supreme Court.

A. V. BLANCHARD & CO.

vs.

ANTOINE PUTTMAN, *et al.*

ERROR TO THE U. S. CIRCUIT COURT, OF SOUTHERN DISTRICT OF OHIO.

This was an action on the case to recover damages of Defendants, for infringing a Patent granted Thomas Blanchard, for an "Improvement in Bending Wood," dated December 18, 1849, and Reissued November 15, 1859. Plaintiffs were Assignees of said Patent. Defendants used their Machine for Wood Bending, at Cincinnati, Ohio, and claimed a License to use the same, under a Patent granted John C. Morris, March 11th, 1856, and Reissued May 22, 1862, for an "Improvement in Wood Bending Machines."

The Machine of Defendants, in appearance, is somewhat unlike that Patented by Blanchard, and Defendants claim it works on a different principle from Blanchard's; while Plaintiffs claim it is the same in principle and mode of operation as Blanchard's, and that it is covered by Blanchard's Patent and Claim.

The real question is therefore, what construction shall be given to Blanchard's Patent. I first call the attention of the Court to

the well known proposition that Patents are to be liberally construed, so as to save to the Inventor the substance of his Invention.

See Curtis on Patents, 126 Winans *vs.* Denmead, 15 How, 330; Blanchard *vs.* Sprague, 2 Story, 169; Blanchard *vs.* Warner, 1 Blatchford, 259; Blanchard *vs.* Beers, 2 Blatchford, 411.

If this Patent shall receive from your Honors the usual liberal construction given such patents in this high tribunal, or the liberal construction given in the cases cited in the various Circuit Courts of the U. S., to the Patents of this famous Inventor, it certainly must cover the Machine of Defendants here in controversy.

WHAT THE BLANCHARD PATENT AND INVENTION IS.

Both the Original and Reissued Blanchard Patents are in the Record. Both state in substantially the same language, that Blanchard has Invented a new method of Wood Bending. Let us then enquire of the Patents what this new method is. The original Blanchard Patent declares the Invention to be "a new method of bending timber and other fibrous substances," and adds "in the following specifications and drawing is a full description of my new mode or method of accomplishing the said object, which I have exemplified in one form of machinery for bending Plow Handles; other articles will require different forms and different arrangements of machinery." Thus it appears that the Patentee did not mean to be limited to any particular form of Machine or Machinery. After describing his particular Machine, the Patentee closes his original Patent with, "I do not claim as my Invention the mechanical powers by which the operation of bending timber is effected, nor any particular form of Machinery to carry my new method into operation, but the Machine herein described is a form which I have adopted to carry out and combine my new method of bending timber, but what I do claim is my method of bending fibrous materials, by means of the upsetting movements, or the upsetting and relaxing movements combined, as exemplified in the Screw H, whether such move-

ment or movements be produced by means of the screw, wedge, cam, lever, rack and pinions, or any other equivalent means.—The machine shown in the drawings is the same both in the original and Re-issued Patent, and is a Plow handle Bending Machine.

In the Re-issued Patent, Blanchard again says at the commencement of his specification "I have invented a new and improved method of bending wood." He then proceeds to describe the former timber bending Machines and to show their defects and adds. "All these difficulties have been remedied by my improved method of bending, which I will now proceed more particularly to describe. The Machine represented in the accompanying drawings is designed for bending plow handles; but it is obvious that the details of the Machinery must be varied when the invention is applied to bending other articles, having different forms.

After describing his Plow Handle Bending Machine, as the best embodiment of the invention the Patentee says: "In lieu of the Bending Mould above described, a drum may be used for a Mould, and this drum may be either cylindrical or elliptical, or of any figure required." At the close of his patent, Blanchard further says: "Having thus described my improved method of bending wood, and having shown one form of machine, embodying the same, adapted to the bending of Plow handles, it is obvious that the same method may be applied to the bending of a great variety of forms, adapted to a great variety of purposes, and that the details of the Machine may be greatly varied without departing from the principle of my invention. What I claim as my invention, and desire to secure by Letters Patent, is my improved method of bending wood substantially, as herein before described." Now, what can be plainer, than that this inventor has not meant to be limited to a mould or form, either rotating or stationary for bending; and that he has meant to cover and patent the whole mode and operation of bending wood by end pressure, which he describes, whether the mould used in bending, stands fixed and stationary, and the wood bent, be rolled

Yet, the Court, substantially decided this case, and took it from the jury by charging as follows: "Now it is insisted upon the part of the plaintiff, that the Stationary Mould is fairly to be included within the claim of the Blanchard Patent." * * I am clearly of the opinion that by no fair construction of the Blanchard Patent, can it be held to comprehend a claim for a stationary form or mould. It is unreasonable to suppose that Blanchard had anything of that kind in his mind, when he was preparing his specification. It would naturally be expected, if it were a part of his conception he would have said in so many words, that though he gave the preference to the rotating form, yet he intended to embrace, also, the stationary form. But we look in vain, throughout the entire instrument, for any intimation that he even thought of a stationary form, while all he does say relates to a rotating form. * * It belongs legitimately to the Court to decide, whether the patent by fair construction embraces the claim for a stationary mould or form, and I announce distinctly, as my opinion, that it can not be so construed." What a charge! It is in the face of all the decisions of this Court, and almost in the words of the charge, which was reversed in Batten *v.* Taggart, 17 How. 80. See also, Winans *v.* Denmead, 15 Howard, 330, where this Court said: "The Patentee having described his invention and shown its principles, and claimed it in that form which most perfectly embodies it, is in contemplation of law, deemed to claim every form in which the invention may be copied, unless he manifests an intention to disclaim some of those forms."

This charge took the whole case from the jury and left them nothing to find, and was in direct antagonism with the law, with the above quoted decisions of this Court, and with the language and meaning of the Patent itself. The Judge avoided any construction of the whole Blanchard Patent, and spent his force in ruling out the stationary form, and in charging that this stationary form could not be covered by the Blanchard Patent. He appears to have been able to see nothing in this case, but this stationary form, and went off in a tangent thereon, charging

as a fact to the jury, that the stationary form was different from the rotating, when he should have left this fact to the experts and jury; and it was a matter of fact which he had no business to charge or pass upon. Certainly this is a clear error.

There is little else in the case, except this construction of the Blanchard Patent; I will merely glance at the other errors.

OTHER ERRORS.

The first error claimed is the improper admission of E. S. Renwick's Deposition. We claim S. S. Fisher's affidavit and the written agreement thereto attached, with the officers' certificate, were not sufficient to entitle the Deposition to be put in evidence.

2nd. We claim Wm. F. Mitchell's evidence was improperly admitted, on the promise of Defendant's Counsel to afterwards so connect it with other evidence as would make it admissible.— There is nothing to show it was ever so connected, and upon its face it was inadmissible.

3d. We claim Christian Leeburgh's evidence was improperly admitted, by whom the Court permitted proof, that a Bending Machine claimed by Defendants, to be made in conformity to Blanchard's Patent, worked badly, and broke much timber, for there was no proof to show that the machine was, in fact, made in conformity to Blanchard's Patent.

4th. We claim that John Byrne's evidence was improperly admitted, who was allowed to testify that a machine made in conformity to the patent of John C. Morris, worked well; because there was no issue here, as to the validity or utility of said Morris' Patent.

5th. We claim John C. Morris' original Patent was improperly ruled out by the Court, when we offered it in evidence. The Court had allowed Defendants to put in evidence, the Morris Re-issue, and to show they were licensees under it, and if this was competent, it was certainly competent to put in the whole Morris Record, in order to detract from his invention, to

show he invented something different from the Re-issue, or had fraudulently obtained the Re-issue.

I do not think it necessary to argue the effect of Defendant's evidence, showing the existence of prior machines though I should claim none of them showed any want of novelty in Blanchard. But this question becomes immaterial, because the jury were not called to pass upon it. The Court blotted out this question of novelty or state of the art, by its charge, and in substance, ordered the jury to find for defendants, because Blanchard's Patent did not cover the stationary form used by Defendants, as the Court held.

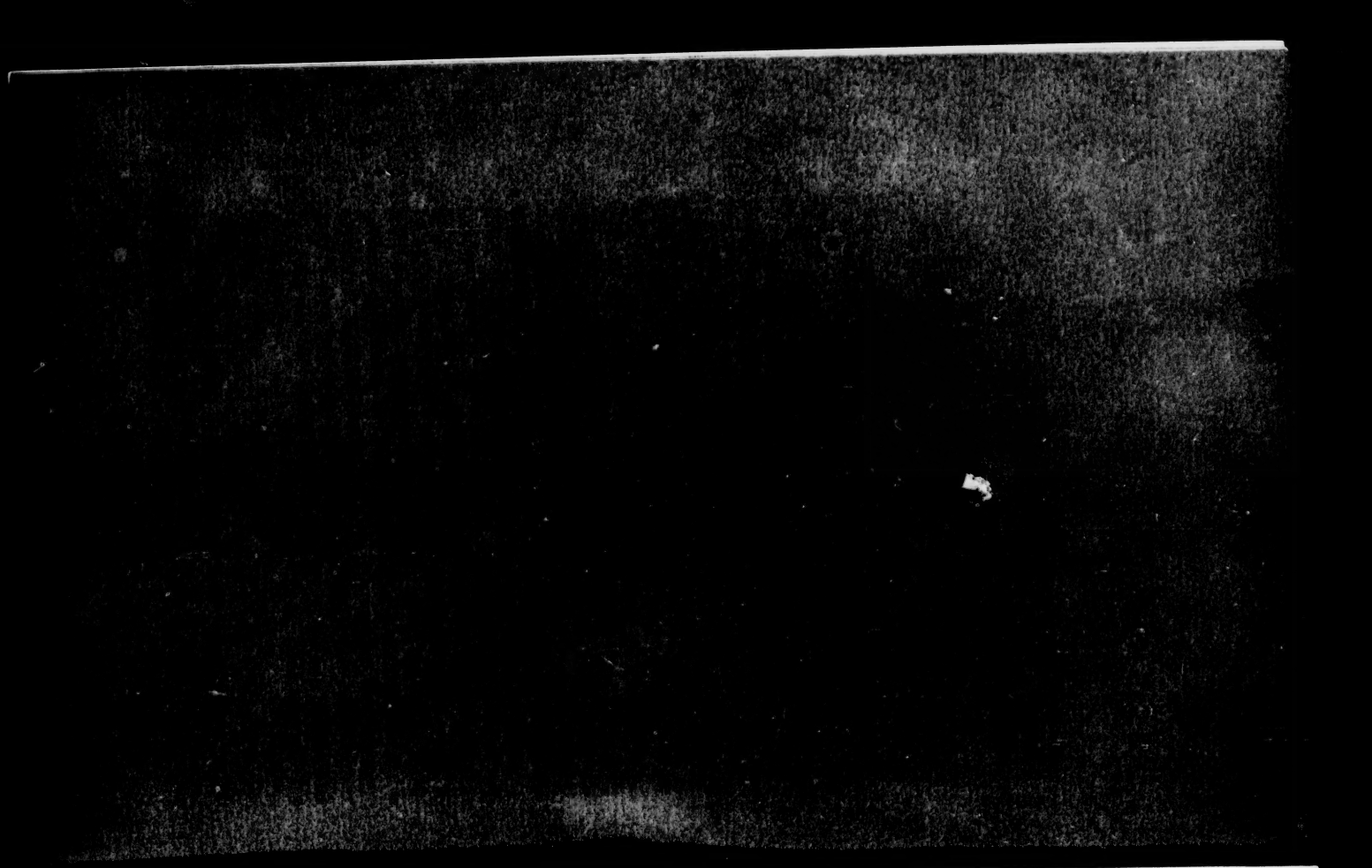
Nor does it seem necessary to enlarge upon the meaning of the new method of bending wood, claimed in Blanchard's Patent. I should claim it meant far more than the simple combination, which the Court held it to be. The claim of a method always means more than a claim for combined parts, which were separately old. It is a usual form of claim, and the Records of the Patent Office and its Reports are full of these claims for "Methods." The claim of a method is not an unusual form of claim as the Court seems to have supposed. This inventor's claim for "his machine for turning irregular forms," patented, January 20, 1820, and reported in Blanchard *v.* Beers, 2 Blatchford 411, is in the same words as the present patent. He there claims, just as here, "the method of operation" in the abstract, and the Court there held the claim good, as this Court, below, should have also done.

We claim the Court erred in refusing to charge the jury, as contained in Plaintiff's Request to charge, marked paper "R," in the Record, Certainly, that paper contained correct law, but as the Court refused to construe the Blanchard Patent, as requested by plaintiff's counsel, the error is substantially covered by the exception to the charge and construction as given, which is more fully argued herein, under that head. In conclusion, I claim there is error apparent in the Record, which should reverse this Judgment.

G. M. LEE,

Attorney for Plaintiffs,

in Error.



Supreme Court of United States.

DECEMBER TERM, 1868.

ALONZO V. BLANCHARD ET AL.,

Plaintiffs in Error,

VS.

ANTOINE PUTTMAN ET AL.,

Defendants in error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR DEFENDANTS IN ERROR.

H. Polkinhorn & Co., prs., D st., bet. 6th and 7th sts., Washington.

Supreme Court of the U. States.

December Term, 1868.

Alonzo Y. Blanchard et al.,
Plaintiffs in Error,

vs.

Antoine Puttman et al.,
Defendants in error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

Brief for Defendants in error.

PLAINTIFFS in error, who were plaintiffs below, were owners of a patent for an "improvement in bending wood," granted to Thomas Blanchard, December, 18, 1849; reissued to him November 15, 1859; and extended for seven years from December 18, 1863, the expiration of the original term.

Defendants in error, who were defendants below, were licensees under letters patent granted John C. Morris,

March 11, 1856, and reissued May 22, 1862, for an "improvement in wood bending machines."

The machine of plaintiffs is what was known in the art as a "rotating form machine." The machine of the defendants is known to the art as the "stationary form machine."

The struggle of the parties in the case was upon the question of infringement; and the issue was finally resolved to the single point whether, in view of the state of the art, plaintiffs patent could be fairly construed to cover machines for bending wood, in which stationary forms were employed.

State of the Art.

Blanchard was by no means the first inventor of wood bending machines, or of wood bending machines employing rotating forms.

Instances of such machines in a useful and practicable form are shown in—

Patent granted E. Reynolds, July 17, 1835.

Patent granted Jonathan Mulford, January 16, 1835.

Patent granted H. H. May, February, 18, 1846.

Patent granted Abel Gardner, December 11, 1849.

Machine used at Grand Detour, Illinois, from 1845 to 1858, and proven by the depositions of Deere, Andrus, Gans, Hathaway, and Casterline.

The Reynolds machine had a rotating form, rotating about a fixed centre.

The Mulford machine had a rotating form also, which rotated about a fixed centre.

The Grand Detour machine was precisely like the Blanchard machine, except that the form, although rotating, did not rotate about a fixed centre.

The forms of the May and Gardner machines did not rotate; they were stationary.

The feature of the machine called "end pressure," which consisted in binding the ends of the wood rigidly during bending, so that the outer fibres could not stretch, is shown in the May, Gardner, and Grand Detour machines. In the latter, it is as perfectly and fully developed as in Blanchard's machine.

Blanchard's Patent.

Wood bending machines, with rotating forms and employing end pressure, being old, it was no longer open for Blanchard to claim such machines, or such functions, broadly. He could claim only his own new devices, or his improvements upon the former machines.

In his original patent of 1849, he claimed—

"My method of bending fibrous materials by means of the upsetting movements, or the upsetting and relaxing movements combined, as exemplified in the screw H, whether such movement or movements be produced by

means of the screw, wedge, cam, lever, rack and pinion, or any other equivalent means."

Upon this patent he brought suit against Mr. Morris, who offered proof of the existence of the Grand Detour machine. The suit was thereupon discontinued, and the patent surrendered and reissued. It will be seen that the Grand Detour machine is described in the reissue, and the invention of Blanchard is carefully discriminated; the special differences between it and the Grand Detour machine being pointed out and claimed as "my improved method of bending wood." The claim of the reissue, in full, was as follows:

"What I claim as my invention, and desire to secure by letters patent, is my improved method of bending wood, substantially as hereinbefore described."

This throws us back upon the specification, in which the inventor says:

"In the machines *heretofore* contrived for the purpose of bending timbers, the bed-piece upon which the stick was placed, and the lever by which the bending was effected, have not been so connected together as to hold them at fixed distances from each other, and consequently, when the piece of timber, being bent, was of varying stiffness, or when it contained knots, it was liable to rise up and leave the mould wherever there was a weak place in the stick; and if the first of the operation was successful, and the part bent was followed by a stiffer portion, the former was liable to be thrown out of place by the more rigid and unyielding portion, and thus an imperfect curve was the result. And these difficulties were not remedied by the employment of flexible bands of metal or other devices intended to prevent the breaking of the timber on

the outside of the bend. The above-mentioned difficulties were in most cases enhanced, if not caused to a considerable extent by the fact that the power by which the timber was bent was applied to the timber itself as a means of communicating the power to the parts to be bent. While in the improvements, to be hereinafter described, the timber is passive and the bending is effected by power applied through the mechanism employed. These machines were also defective in another particular. If the attempt should be made on them to apply any considerable pressure to the end of the timber to be bent instead of consolidating the material and causing the fibre thereof to be condensed, such pressure would only increase the tendency to bulge up the timber from the mould and break it. All these difficulties have been remedied by my improved method of bending, which I will now proceed more particularly to describe."

The foregoing description was in substance of the Grand Detour machine; and that which follows in the specification is intended to point out the improvements which the patentee supposed he had made in that machine.

In the Grand Detour machine the lever and bed-piece were not held at fixed distances. In the Blanchard machine they are held at fixed distances.

In the Grand Detour machine the power was applied to the timber. In the Blanchard machine the timber was passive.

In the Grand Detour machine there was end pressure, but no relaxation. In the Blanchard machine there was end pressure combined with relaxation.

The patentee then describes a machine for bending plow handles with a rotating form. Afterward he says: "In

lieu of the bending-mould above described a drum may be used for a mould, and this drum may be either cylindrical or elliptical, or of any figure required, and INSTEAD OF ACTUATING THE MOULD BY A LEVER, COG-WHEELS MAY BE USED, and any species of power applied to drive the machine."

This describes another form of rotating mould, to wit, a drum actuated by cog-gearing. There is no mention of a stationary form, nor hint of one from first to last. In the stationary-form machines the mould or form stood still, and the timber was moved to it; or, in other words, "the power by which the timber was bent was applied to the timber itself as a means of communicating power to the parts to be bent."

In Blanchard's machine this could not be done; for, as he says, "the timber is passive and the bending is effected by power applied through the mechanism employed."

As this is impossible in all stationary-form machines, this was virtually a disclaimer of all stationary-form machines.

Accordingly the Court charged the jury distinctly, "It belongs legitimately to the Court to decide whether the patent, by fair construction, embraces the claim for a stationary mould or form, and I announce distinctly as my opinion that it cannot be so construed." The Judge added immediately afterward, at the request of plaintiffs' counsel, the following:

"One thing may be a mechanical equivalent for another. That is the claim of the plaintiff's counsel here—that

though Blanchard does not provide for a stationary form, he claims what is a mechanical equivalent for it. * * * The idea I intended to convey to the jury was, that if they found in the Morris machine, either what is substantially the same or what is a mechanical equivalent for the other, then they would come to the conclusion that the two machines were identical in principle and operation."

This charge was all and more than the plaintiffs had a right to ask. The Judge might well have charged that Blanchard having disclaimed the use of machines in which the timber was the active agent in the bending, his assignees were estopped from claiming that such machines could be the equivalent of his. The Court, however, did say, in effect, "Blanchard does not claim the stationary form, but if you find it to be the equivalent of the rotating form, the machines are alike, and there is infringement."

Defendant's Machine.

The defendant's machine had a stationary form, and contained all the features which Blanchard declared it was the object of his invention to avoid; that is to say:

1. The bed-piece and the lever were not connected at fixed distances.

2. The power was applied to the timber itself as a means of communicating power to the parts to be bent.

3. End pressure was applied, but no means were provided for relaxation.

As this machine was as different from Blanchard's as it was possible to make it; as, in fact, it belonged to an entirely different *class* of machines, it would seem that the verdict was right which declared it to be no infringement.

Other Alleged Errors.

1. The deposition of Mr. Renwick was read by virtue of a written agreement between counsel, (Record, p. 31.) The deposition *was* properly taken in the case of Morris *vs.* Royer, Coleman, and Young, under the act of Congress, and under the circumstances narrated in the affidavits. It was therefore properly admitted in this case.

2. As the bill of exceptions does not purport to recite the whole testimony, if the plaintiff wished to show that Mitchell's testimony was improperly admitted, he should have stated in the bill of exceptions either that it never was connected with other evidence or that the Court subsequently refused to exclude it. The bill must recite all the facts necessary to show the alleged error.

3. The testimony of Christian Leesburgh was offered to show the working of the Blanchard machine. That machine was for "bending wood." The patentee describes a plow-handle machine, but says: "The machine represented in the accompanying drawings is designed for bending plow handles, but it is obvious that the details of the machinery must be varied when the invention is applied

to bending other articles having different forms." The defendants were sued for using a machine for bending, not plow handles, but felloes, and therefore the evidence was perfectly pertinent.

4. John Byrne was called to show that in the Morris machine, in operation, there was no relaxation. As this relaxation was one of the peculiar features of the Blanchard "method," it was certainly relevant to show that the machine used by defendant did not employ it.

5. Defendants being licensees under the reissued letters patent of Morris, put them in evidence under the decision of the Supreme Court in *Corning* vs. *Burden*, (15 How., 252.) The plaintiffs thereupon offered the original letters patent.

As the Morris patent was not on trial, and the evidence afforded by the reissued patent merely went to the extent of showing that defendants acted under color of title or right, it is not perceived what part the original patent could play in the case. Certainly oral evidence could not have been received attacking the Morris reissue. The Court could not try two cases at once, and the original patent could neither strengthen nor weaken the presumption that the defendants were using a machine which the Patent Office had declared to be patentable, notwithstanding the prior patent of Blanchard.

6. The Court refused the specific charges asked by

plaintiffs, in the form in which they were offered, but gave them in substance.

The exceptions to the charge are not specific, but, from the argument of the counsel for the plaintiffs in error, I understand them to be confined to the question of construction, and to so much of that question as related to the stationary form. This has already been considered.

SAMUEL S. FISHER,
Of Counsel for Defendants in Error.